

June 13, 2002

NT-Docket No. 02-28
IRM-10077

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Federal Communications Commission
Office of Secretary

Ms. D'Wanda Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Subject: Need for Correction of Contradictory Paragraph in Federal Communications Commission (FCC) Rules, Section 90.20(f)(5).

Dear Ms. Terry;

We would appreciate your consideration of the subject problem and if you feel additional discussion is required, we are available to meet with you or someone from your staff.

FCC Rules Paragraph 90.20(f)(5) is causing confusion among licensees in the Police Radio Service. Over the past year we have had an increasing number of Police Radio Service category licensees requesting coordination for non-firefighting use of 170-172 MHz, Forestry Conservation category, Limitation Note **49** frequencies, **listed** in Public Safety Pool Frequency Table of paragraph (c)(3). More recently, our decision to deny coordination to a non-firefighting agency was challenged by the State of California. Before sustaining our decision, we contacted representatives of both the FCC and the National Telecommunications and Information Administration (NTIA), for clarification of our understanding of the intent of paragraphs (c)(3) and (f)(5). Both agencies responded in agreement with our understanding. Paragraph (f)(5) is beginning to strain what is otherwise a good relationship between our organization as a coordinator and PP category licensees.

Paragraph (f)(5), states that "A Police licensee may use, without special authorization from the Commission, any mobile service frequency between 40 and 952 MHz, listed in paragraph (c)(3) of this section, Use of the frequencies not designated by a "PP" in the coordinator column of the frequency table in paragraph (c)(3) of this section, is conditional on the approval of the coordinator corresponding to each frequency."

There is no direction in paragraph (f)(5) that requires licensees (or coordinators) to follow the requirements of the Notes referenced in the Limitations column of the paragraph (c)(3) frequency table.

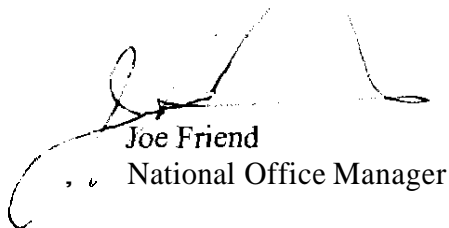
The ~~State of~~ California has argued that paragraph (f)(5) takes precedence **over** the frequency table in paragraph (c)(3). Our position **is** that the Limitations column and associated Notes of the frequency table are critical **to proper** spectrum management and should not be ignored or overridden by paragraph (f)(5).

Of particular interest, is the fact that the frequencies of concern to us are in the Federal (NTIA managed) portion of the spectrum and are authorized for use by FCC licensees through Footnote US-8, of the Allocation Tables. Footnote US-8 is specific in limiting the use of the listed frequencies to firefighting protection, detection, and suppression activities. Paragraph (f)(5) should not be able to negate the FCC/NTIA, US-8 agreement, without renegotiation. Paragraph (f)(5) should be corrected to reflect proper implementation of Footnote **US-8** in the FCC Rules.

We offer two possible suggestions to correct paragraph (f)(5). Add a sentence or a footnote to the paragraph stating: "Police operations authorized under this paragraph must follow the direction of the Limitations column of the frequency table in (c)(3)". If that statement is too restrictive, then the following might be considered: "Police operations authorized under this paragraph, that are considering use of 170-172MHz frequencies listed in the PO category, must follow the direction of the Limitations column of the frequency **table** in (c)(3)".

You can contact me or Marv Storey at telephone 202-624-8474, *or email* at fcc@SSO.org

Thank you for your consideration.



Joe Friend
National Office Manager